

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WAYNE AUSTIN AND KAYE AUSTIN,

Plaintiffs,

vs.

Case No. 2:09-cv-14147-VAR-MJH

EVANS & LUPTAK, P.L.C., MICHAEL J.
MEHR, AND DOES 1 through 20, inclusive,

Hon. Victoria A. Roberts

Defendants.

GEORGE A. GOOGASIAN (P14185)
THOMAS H. HOWLETT (P57346)
DEAN M. GOOGASIAN (P53995)

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DEFENDANTS EVANS & LUPTAK, P.L.C. AND
MICHAEL J. MEHR'S PRELIMINARY DESIGNATION
OF POTENTIALLY RESPONSIBLE NON-PARTIES AT FAULT

Defendants Evans & Luptak, P.L.C. and Michael J. Mehr, by and through their attorneys, Rutledge, Manion, Rabaut, Terry & Thomas, P.C., and in accordance with MCL § 600.2957, hereby provide their preliminary notice to all parties and the Court that the following non-parties may be wholly or partially at fault for the incident(s), occurrence(s), injuries and/or damages claimed in Plaintiffs' Complaint and that the relative proportion of fault of these non-parties will be an issue raised by Defendants at trial.

The fault of the non-parties may arise as a result of the following and/or as a result of one or more of the claims or theories of liability set forth in Plaintiffs' Complaint or any amended Complaint. The potentially responsible non-parties would include, but not be limited to, the following:

1. All parties, other than Defendants Evans & Luptak, P.L.C. and Michael J. Mehr, named in Plaintiffs' Complaint, amended Complaints, Counterclaims, and/or Third Party Complaints and all amendments thereto, but who have been or will be dismissed.
2. All parties, if any, which have settled or will settle with Plaintiffs.
3. End of the Search, a/k/a EOTS, a/k/a ETOS Foundation (hereinafter "EOTS"), 9600 French Creek Rd, Etna, CA 96027 or 9631 French Creek Rd., Etna, CA 96027.

In their Complaint, Plaintiffs allege, *inter alia*, that Defendants were negligent and/or breached certain duties owed to them in preparing an estate plan on behalf of Kenneth G. Hodas which was vulnerable to a contest by Kenneth Hodas' daughter, Rachel Hodas. Among other things, Plaintiffs claim that Defendants failed to obtain a certification of independent review to protect against a challenge to the estate plan on the grounds that Wayne Austin and Kaye Austin could be considered "care custodians" under California statute. Defendants have denied the allegations against them in their entirety.

Defendants have identified EOTS as a potentially non-party at fault, in part, based upon EOTS website in which Wayne Austin and his wife, Kaye Austin, are described as "caretakers" who provide meals, shelter and generally take care of the "needs" of the EOTS members or "family" at no cost. ". . . MU¹ is like any other family home and the caretakers (Wayne and his wife) are honored to be able to serve the [EOTS] family in any way they can." These statements and/or representations, among others, could have made Wayne and Kaye Austin vulnerable to a

¹ According to this website, MU is the home of EOTS.

challenge and/or could have created a presumption and/or could have supported a contest by Kenneth Hodas' daughter, Rachel Hodas, who alleged that the Austins were "care custodians" who had exerted undue influence upon Kenneth Hodas prior to his death, which Defendants understand the Austins have denied. Defendants believe that EOTS, its officers, directors, members, agents and/or representatives when creating, publishing and/or maintaining this website failed to use reasonable care, discretion and judgment, failed to appreciate the intent, scope, effect and extent of the language contained in the website, and may have breached certain duties and/or obligations owed to some or all of the Plaintiffs, and Defendants believe that those breaches of duty, breaches of the standard of care, and negligent acts and/or omissions were a proximate cause of Plaintiffs' alleged injuries and/or damages.

Defendants reserve the right to amend this Notice as new information is obtained through discovery that was not known or available to these parties at the time of this notice. Defendants may also rely upon any notice filed by any other present or later added defendant or third party defendant in this action.

**RUTLEDGE, MANION, RABAUT,
TERRY & THOMAS, P.C.**

s/Madeleine R. Szymanski
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DATED: March 10, 2010

CERTIFICATE OF SERVICE

I, LINDA S. HALLER hereby certify and say that I am employed by the law firm of RUTLEDGE, MANION, RABAUT, TERRY & THOMAS, P.C., and that on the 10th day of March, 2010, I electronically filed the foregoing paper with the Clerk of the Court and served via electronic filing upon:

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I declare that the statements above are true to the best of my information, knowledge and belief.

s/Linda S. Haller
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